

SCANNED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE ORRACA,

Plaintiff,

vs.

RICHARD AUGUSTINE, DREW ONIFER,
BRIAN CRAWFORD and RICHARD CECCE,

Defendants.

**STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE
PURSUANT TO
RULE 41(a)(1)(A)(ii)**

Civil Action No.:
10-cv-00840

WHEREAS, the parties hereto have agreed to settle this action pursuant to the provisions of Rule 41(a) of the Federal Rules of Civil Procedure; and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the above-entitled action and the same hereby is discontinued on the merits, with prejudice, without costs to either party as against the other; and

WHEREAS, the New York State Department of Corrections and Community Supervision, as the Department having supervision of defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce, has approved the settlement of this action under the terms and conditions set forth below; and

WHEREAS, defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce do not admit any wrongdoing but approve the settlement for the convenience of all interested parties; and

WHEREAS, the parties hereto have entered into this Stipulation of Settlement and Discontinuance in connection with the settlement of this action; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned, the attorneys of record for all of the parties in the above-entitled action and plaintiff, as follows:

1. The above-entitled action is settled in full and final satisfaction of any and all claims of plaintiff Jose Orraca, upon payment of the sum of ONE THOUSAND DOLLARS (\$1000.00), and the action is hereby discontinued with prejudice as to defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce. Payment shall be made by check payable to the order of Jose Orraca, Din No. 93-A-9300, and mailed to him at the correctional facility in which plaintiff Jose Orraca, Din No. 93-A-9300 is incarcerated, for deposit into his inmate facility/departmental account.

2. In consideration of the payment of the sum set forth in paragraph 1, the plaintiff Jose Orraca hereby waives, releases and forever discharges defendants and any and all current or former employees of the New York State Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators, successors and assigns and hereby releases and fully discharges the State of New York and the New York State Department of Corrections and Community Supervision, from any and all claims, liabilities and causes of action, known or unknown, arising out of or premised upon the circumstances set forth in the complaint in the above-entitled action, including but not limited to claims relating to or arising out of any alleged violation of plaintiff Jose Orraca's constitutional rights, and all other causes of action and claims of liability.

3. In further consideration of the payment of the sum set forth in paragraph 1, plaintiff Jose Orraca hereby waives, releases and forever discharges defendants and any

and all current or former employees of the New York State Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators, successors, and assigns and the State of New York and the New York State Department of Corrections and Community Supervision, from any and all claims, known or unknown, arising out of the plaintiff Jose Orraca's Medicare eligibility for and receipt of Medicare benefits, and/or arising out of the provision of primary payment (or appropriate reimbursement), including cases of action pursuant to 42 U.S.C. §1395y(b)(3)(A) of the Medicare, Medicaid and SCHIP Extension Act of 2007.

4. Payment of the sum set forth in paragraph 1 is subject to the approvals of all appropriate State officials in accordance with the provisions for indemnification under Public Officers Law Section 17. Plaintiff Jose Orraca agrees to execute and deliver to counsel for defendants all necessary or appropriate vouchers and other documents requested with respect to such indemnification and payment.

5. Payment of the amounts referenced in paragraph 1 will be made within one hundred and twenty (120) days after this Court approves this Stipulation of Settlement and defendants' counsel receipt of a copy of the so-ordered Stipulation of Dismissal along with any further documentation as required under paragraphs 12 and 13 hereof, unless the provisions of Executive Law § 632-a apply to plaintiff Jose Orraca and the payment hereunder constitutes "funds of a convicted person" under the Son of Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

6. In the event that the aforementioned approvals in paragraph 4 of all appropriate State officials in accordance with the provisions for indemnification under Public Officers Law Section 17 are satisfied, but payment is not made within the 120 day or 150 day period set forth herein, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the 121st day after court approval or the 151st day after court approval if the provisions of Executive Law § 632-a apply to plaintiff Jose Orraca.

7. Each party shall bear its own costs and fees, inclusive of attorneys' fees, relating to this proceeding and the costs and fees shall be hereby waived by the parties against each other.

8. Nothing contained herein shall constitute an admission by defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce, individually or in their official capacity, that they deprived the plaintiff, Jose Orraca, of any right, or of failing to perform any duty under the Constitutions, Statutes, Rules, Regulations or other laws of the United States or the State of New York.

9. This Stipulation of Settlement and Discontinuance and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose except in an action or proceeding to enforce this Stipulation of Settlement and Discontinuance.

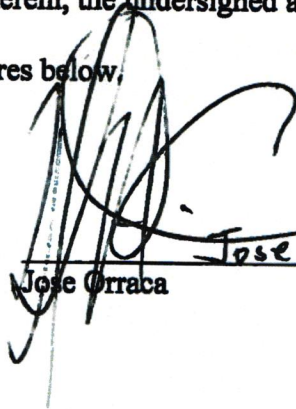
10. Plaintiff Jose Orraca represents and warrants that he is not a Medicare recipient, has never been on Medicare or on Social Security Disability, that no conditional payments have been made by Medicare and that he does not expect to be a Medicare recipient within the next 30 months.

11. Plaintiff Jose Orraca agrees that the defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce, the New York State Department of Corrections and Community Supervision and the State of New York shall not be responsible for any liens of any kind which may have attached to the proceeds from this settlement and further that plaintiff Jose Orraca will defend, indemnify and hold harmless defendants Richard Augustine, Drew Onifer, Brian Crawford and Richard Cecce, the New York State Department of Corrections and Community Supervision, its officers, agents and employees and the State of New York for the satisfaction of any such liens.

12. The recitals set forth above are material hereto and are incorporated herein by reference.

13. In confirmation of the agreement herein, the undersigned attorneys for the parties to this action and plaintiff set their signatures below.

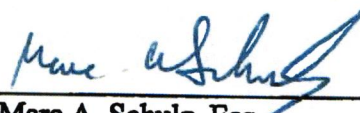
Dated: Marcy, New York
November 17, 2015


Jose Orraca

Dated: Buffalo, New York
November 30, 2015

Hurwitz & Fine, P.C.

By:


Marc A. Schulz, Esq.
Attorneys for Plaintiff
1300 Liberty Building
Buffalo, NY 14202

Dated: Buffalo, New York
~~November~~ December 9, 2015

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Attorney for the Defendants
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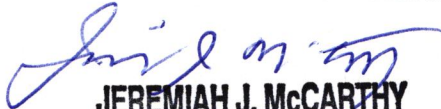
By:


David J. Sleight
Assistant Attorney General

Dated: Buffalo, New York
November __, 2015

SO ORDERED:

Hon. Jeremiah J. McCarthy
United States District Court Judge


JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

12/10/15